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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/176,634	10/22/1998	MORDECHAI TURI	JWB-98-9-P	2106

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EXAMINER

KIDWELL, MICHELLE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 08/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SM.

Office Action Summary

Application No.

09/176,634

Applicant(s)

TURI ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1 – Figures 1 – 7

Species 2 – Figures 8 – 13

Species 3 – Figures 14 – 19

Species 4 – Figures 20 – 24

Species 5 – Figures 25 – 28

Species 6 – Figures 29 – 32

Species 7 – Figures 33 – 37

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with James Badie on August 20, 2002 a provisional election was made with traverse to prosecute the invention of figures 20 – 24, claim 36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 28 – 35 and 37 – 38 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled (see the first page of the preliminary amendment filed 7/23/02), the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 17 – 27 have been renumbered 28 – 38. Claim 36 is objected to because of the following informalities: the word “side” should be replaced with “sides” in line 16. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 36 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 36 recites the following limitations:

- “the waist portion” in line 10
- “the other one” in line 15
- “the middle” in lines 13, 15 and 18 – 20
- “the other end” in line 19

- “the other one” in line 20
- “said first and second arched-shaped elasticized barrier layers” in lines 22 - 23

There is insufficient antecedent basis for these limitations in the claim.

Additionally, with respect to claim 36, the applicant claims that the elasticized barriers intersect to form a double barrier layer. Do the elasticized barrier layers intersect the topsheet, the longitudinal sides, each other, etc? Clarification is required.

Further, the applicant claims that the two arch-shaped elasticized barrier layers are attached between the middle and the distal end of one of the longitudinal sides to form a first retaining enclosure between the first barrier layer and the topsheet. However, the applicant has only defined longitudinal sides with respect to the absorbent layer positioned between the topsheet and the backsheet. Does the applicant intend for the retaining enclosure to be positioned between the topsheet and the backsheet or between the barrier layer and the topsheet? The same holds true for the second elasticized barrier layer. Correction is required.

Even further, the applicant claims two-arched-shaped elasticized barrier layers, a first generally concave elasticized barrier layer and a second generally convex elasticized barrier layer. Does the applicant intend to claim 4 barrier layers or two arched-shaped elasticized barrier layers comprising a first and second elasticized barrier layer? Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 36 is rejected under 35 U.S.C. 102(b) as being anticipated by Enloe (US 4,753,646).

Regarding claim 36, Enloe discloses an integral disposable elasticized absorbent article having a longitudinal axis and a lateral axis (figure 1) comprising a top sheet (18), a back sheet (17), a front waist and back waist portion, a crotch portion and a pair of spaced apart leg openings (figure 1), an absorbent layer having a longitudinal axis and a horizontal axis disposed between the topsheet and the backsheet, the absorbent layer being defined by opposed spaced apart longitudinal sides each having a proximal end and a distal end, and opposed spaced apart proximal and distal sides (col. 2, lines 17 – 23 and figure 1), means for fastening the absorbent article around the waist portion of a wearer of the absorbent article (11), and two arched-shaped elasticized barriers; a first generally concave elasticized barrier layer having one end attached between the middle and distal end of one of the longitudinal sides and second end attached between the middle and distal end of the other one of said longitudinal sides thereby forming a first retaining enclosure between the first barrier layer and the topsheet (15a), and a second generally convex elasticized barrier layer having one end attached between the middle and proximal end of one of the longitudinal sides and the other end attached between

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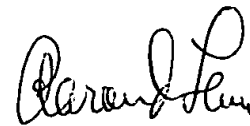
the middle and distal end of the other one of the longitudinal sides thereby forming a second retaining enclosure between the second barrier layer and the topsheet, and wherein the first and second arched-shaped elasticized barrier layers intersect (i.e. the topsheet) to form a double barrier layer on the topsheet of the absorbent article as set forth in figure 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on 703-308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
August 21, 2002


Aaron J. Lewis
Primary Examiner